

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 59 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

FATEJI MAGANJI THAKORE

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner
MR KT DAVE, AGP, for the respondents.

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 07/03/2000

ORAL JUDGEMENT

1. District Magistrate, Banaskantha, at Palanpur, on July 7, 1999, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detained the petitioner-Fataji Maganji Thakore under the provisions

of the PASA Act.

2. The detaining authority took into consideration six offences registered against the petitioner with Bhiladi Police Station for offence punishable under Section 379 involving theft of aluminium wire. The detaining authority found that resorting to less drastic remedy may not prove to be efficacious and the only remedy is to detain the petitioner under the PASA Act in order to immediately prevent his anti-social activities. The detaining authority observed that the petitioner is a "dangerous person" as defined under the PASA Act and passed the order of detention.

3. The petitioner, by this petition under Article 226 of the Constitution, challenges the order of detention on various counts. However, learned advocate, Mr. Prajapati, appearing for the petitioner has restricted his arguments on ground of delay. He submitted that the detaining authority has relied on the six offences registered against the petitioner. Last such offence relates to 27th October, 1998. The order is passed on 7th July, 1999 and, therefore, there is delay. He submitted that, even if the date of arrest is considered, the petitioner was arrested on May 6, 1999 and was bailed out on May 10, 1999. Thereafter, there is no involvement of the petition in any criminal activity, that finds place in the grounds of detention. Mr. Prajapati, therefore, urged that there is a delay of about two months in passing the order. The imminent need for detention recorded by the detaining authority, therefore, cannot be considered as genuine and, therefore, the petition may be allowed.

4. Mr. K.T. Dave, learned Assistant Government Pleader, has opposed this petition.

5. Considering the rival side contentions, the first and foremost thing that requires to be noted is that the detaining authority has not filed any affidavit-in-reply. It is clear from the grounds of detention that the order of detention is based on the activity of the petitioner as emerging from the cases registered against him. Last such case relates to October 27, 1998. The last arrest relates to May 6, 1999 and the order is passed on 7.7.1999. If the incident is considered, it is after a lapse of about nine months. If the arrest is considered, it is after a lapse of about two months. The immediate need because of imminent risk to public order due to activities of the detenu recorded by the detaining authority cannot be considered as genuine, particularly

when no attempt is made to explain the delay in this regard. The detention order, therefore, would stand vitiated and the petition, therefore, deserves to be allowed.

6. In view of the above discussion, the petition is allowed. The impugned order of detention dated July 7, 1999, passed against the detenu is hereby quashed. The detenu-Fataji Maganji Thakore is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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